

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR 07-113-GF-BMM-01

CR 12-70-GF-BMM-01

Plaintiff,

vs.

DANNY THOMAS FOX,

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

Defendant.

I. Synopsis

Mr. Fox was accused of violating his conditions of supervised release by (1) using methamphetamine, and (2) failing to report for substance abuse testing. He admitted to the violations. Mr. Fox's supervised release should be revoked. He should be placed in custody for six months, with twenty-one months of supervised release to follow. He should be evaluated for in-patient treatment options as part of his supervised release.

II. Status

On November 28, 2007, United States District Judge Sam E. Haddon accepted Mr. Fox's plea of guilty to the offense of Arson. (CR 07-113-GF-BMM-01, Doc. 32.) Mr. Fox was sentenced to 45 months of incarceration, with five years of supervised release to follow. (Doc. 42.) On June 29, 2011, Mr. Fox's first term of supervised release was revoked because he violated its conditions by using alcohol and drugs. He was sentenced to nine months of custody and 51 months of supervision. (Doc. 53.) His next term of supervision began on March 19, 2012. (Doc. 71.)

On July 31, 2012, Mr. Fox's supervised release was revoked after he used alcohol and refused to participate in substance abuse and mental health treatment. He was sentenced to nine months of custody and 32 months of supervised release. (Doc. 67.)

In November 2012, the Court accepted Mr. Fox's plea of guilty to the offense of Felon in Possession of a Firearm. Mr. Fox was sentenced to 35 months of custody and 36 months of supervised release. (CR 07-113-GF-BMM-01, Docs. 20, 25.) Mr. Fox began his next term of supervised release on February 3, 2014.

On April 18, 2016, the United States Probation Office filed a Report on Offender under Supervision, notifying the Court that Mr. Fox had used a

prescription opiate without a valid prescription. (CR 17-20-GF-BMM, Doc. 28.)

On August 31, 2016, United States District Judge Brian Morris revoked Mr. Thomas's supervised release because he committed a new crime, used methamphetamine, and failed to attend substance abuse treatment. (CR 17-20-GF-BMM, Doc. 39.) Judge Morris sentenced him to five months in custody, with twenty seven months of supervised release to follow. (*Id.*) His current term of supervised release began on December 20, 2016.

On January 9, 2017, the Probation Office filed a Report on Offender Under Supervision notifying the Court that Mr. Thomas used methamphetamine. (CR 07-113-GF-BMM-01, Doc. 83.) Judge Morris allowed Mr. Fox to continue with his supervised release.

Petition

On February 17, 2017, the Probation Office filed a petition asking the Court to revoke Mr. Fox's supervised release alleging that he violated the conditions of his supervised release by (1) using methamphetamine, and (2) failing to report for substance abuse testing. (CR 07-113-GF-BMM-01, Doc. 84.) Based on the petition, United States District Judge Brian Morris issued a warrant for Mr. Fox's arrest. (CR 07-113-GF-BMM-01, Doc. 85.)

Initial appearance

Mr. Fox appeared before the undersigned on February 28, 2017, in Great Falls, Montana. Federal Defender Anthony Gallagher accompanied him at the initial appearance. Assistant United States Attorney Bryan Dake represented the United States.

Mr. Fox said he had read the petition and understood the allegations. Mr. Fox waived the preliminary hearing, and the parties consented to proceed with the revocation hearing before the undersigned.

Revocation hearing

Mr. Fox admitted that he violated the conditions of his supervised release. The violations are serious and warrant revocation of his supervised release. Mr. Fox moved to continue the sentencing phase of the revocation hearing for thirty days. The Court granted the motion.

The Court conducted the sentencing phase of Mr. Fox's revocation hearing on March 30, 2017. (CR 07-113-GF-BMM-01, Doc. 92.) Federal Defender Evangelo Arvanetes represented Mr. Fox at the sentencing phase. Assistant United States Attorney Jared Cobell represented the United States.

Mr. Fox's violation grade is Grade C, his criminal history category is III, and his underlying offenses are a Class A felony and a Class C felony. He could

be incarcerated for up to 60 months. He could be ordered to remain on supervised release for 37 months, less any custody time imposed, in cause number CR-07-113-GF-BMM-01 and 31 months, less any custody time imposed, in cause number CR-12-70-GF-BMM-01. The United States Sentencing Guidelines call for five to 11 months in custody.

Mr. Arvanetes recommended as low of a sentence as the Court determines is reasonable. Mr. Cobell recommended a sentence at the high-end of the guideline range. Mr. Fox addressed the Court and said he missed his appointments because his father came to town.

III. Analysis

Mr. Fox's supervised release should be revoked because he admitted violating its conditions. In both cases, Mr. Fox should be sentenced to six months of incarceration, with twenty-one months of supervised release to follow, to run concurrently. This sentence would be sufficient given the seriousness of the violations but not greater than necessary. The conditions previously imposed should be continued.

IV. Conclusion

Mr. Fox was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and

Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider his objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The undersigned **FINDS:**

Mr. Fox violated the conditions of his supervised release by (1) using methamphetamine, and (2) failing to report for substance abuse testing.

The undersigned **RECOMMENDS:**

The district court should enter the attached Judgment, revoking Mr. Fox's supervised release and committing him to the custody of the United States Bureau of Prisons for six months, with twenty-one months of supervised release to follow on each count, to run concurrently. Mr. Fox should be evaluated for in-patient treatment options as part of his supervised release.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to

which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 4th day of April 2017.



John Johnston
United States Magistrate Judge